

Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 4903

4903. Innocent Spouse or Registered Domestic Partner Relief from Liability.

(a)~~(1)~~ In General.

(1) A spouse requesting innocent spouse~~claiming~~ relief from liability for any tax, fee, or surcharge, interest, penalties, and other amounts shall be relieved from such liability where all the following requirements are met:

(A) A liability is incurred under the Alcoholic Beverage Tax Law, Cigarette and Tobacco Products Tax Law, Diesel Fuel Tax Law, Emergency Telephone Users Surcharge Law, Energy Resources Surcharge Law, Fee Collection Procedures Law, Hazardous Substances Tax Law, Integrated Waste Management Fee Law, Motor Vehicle Fuel Tax Law, Oil Spill Response, Prevention, and Administration Fees Law, Private Railroad Car Tax Law, Timber Yield Tax Law, Underground Storage Tank Maintenance Fee Law, or Use Fuel Tax Law;

(B) The liability is attributable to the non-requesting~~nonclaiming~~ spouse;

(C) The spouse requesting~~claiming~~ relief establishes that he or she did not know of, and that a reasonably prudent person in the requesting~~claiming~~ spouse's circumstances would not have had reason to know of, the liability; and

(D) It would be inequitable to hold the requesting~~claiming~~ spouse liable for the liability, taking into account whether the requesting~~claiming~~ spouse significantly benefited directly or indirectly from the liability, and taking into account all other facts and circumstances.

(2) For purposes of this section, the word "tax" shall mean "tax, fee, or surcharge."

(b) Benefited. Whether a requesting~~claiming~~ spouse has benefited directly or indirectly from the liability will be determined by a review by the Board of all of the available evidence. Normal support payment is not a significant benefit for purposes of this determination. Normal support is measured relative to each family's standard of living. The requesting~~claiming~~ spouse will not be deemed to have benefited directly or indirectly from the liability solely as a result of normal support unless his or her lifestyle significantly improved during the periods of liability. Gifts received by the requesting~~claiming~~ spouse, or lavish or luxury purchases made by either spouse may be evidence that the requesting~~claiming~~ spouse benefited directly or indirectly from the liability. Evidence of direct or indirect benefit may consist of transfers of property, including transfers which may be received several years after the calendar quarter in which the liability occurred. For example, if a requesting~~claiming~~ spouse receives from the other spouse an inheritance of property or life insurance proceeds which are traceable to the liability, the requesting~~claiming~~ spouse will be considered to have benefited from that liability. Other factors considered may include desertion of the requesting~~claiming~~ spouse by the other spouse or that the spouses have become divorced or separated subsequent to the periods of liability.

(c) Attribution. The determination of the spouse to whom items of liability are attributable shall be made without regard to community property laws.

(1) A ~~claim~~request for innocent spouse relief may be filed if, at the time relief is requested, the ~~requesting~~~~claiming~~ spouse is no longer married to or is legally separated from the ~~non-requesting~~~~nonclaiming~~ spouse, or the ~~requesting~~~~claiming~~ spouse is no longer a member of the same household as the ~~non-requesting~~~~nonclaiming~~ spouse.

(2) With respect to a liability incurred as a result of a failure to file a return or an omission of an item from the return, attribution to one spouse may be determined by whether a spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer engaged in an activity or transaction that is subject to a tax administered under the laws specified in paragraph (1) of subdivision (a) and related to the liability. If neither spouse rendered substantial services as a taxpayer, feepayer, or surcharge payer, then the attribution of the liability shall be treated as community property. A liability incurred as a result of an erroneous deduction or credit shall be attributable to the spouse who caused that deduction or credit to be entered on the return.

(d) Written Request for Relief. To seek relief under ~~subdivision (a)~~~~these provisions~~, a ~~requesting~~~~claiming~~ spouse ~~must file~~~~may submit~~ a written request for innocent spouse relief setting forth the tax account number, the period for which relief is requested, and the specific grounds upon which the request for relief is based.

(e) Other Equitable Relief. A requesting spouse may also be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the requesting spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse shall be considered for other equitable relief under this subdivision after the spouse files a written request for innocent spouse relief under subdivision (d).

(1) Factors that may be considered for the purpose of granting other equitable relief include, but are not limited to:

(A) The requesting spouse is separated (whether legally or not) or divorced from the non-requesting spouse.

(B) The requesting spouse would suffer economic hardship if relief is not granted.

(C) The requesting spouse, under duress from the non-requesting spouse, did not pay the liability. To substantiate "duress," the requesting spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.

(D) The requesting spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.

(E) The non-requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the requesting spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the non-requesting spouse would not pay the tax.)

(F) The tax for which the requesting spouse is requesting relief is attributable to the non-requesting spouse.

(2) Factors that may be considered for purposes of denying other equitable relief include, but are not limited to:

(A) The requesting spouse will not suffer economic hardship if relief is not granted.

(B) The requesting spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the requesting spouse signed the return.

(C) The requesting spouse received a significant benefit from the unpaid tax or items causing the understatement.

(D) The requesting spouse has not made a good faith effort to comply with the Board's laws for the periods for which the requesting spouse is requesting relief or for subsequent periods of liability.

(E) The requesting spouse has a legal obligation under a divorce decree or agreement to pay the tax.

(F) The tax for which relief is being requested is attributable to the requesting spouse.

(f) Reconsideration. A requesting spouse who is denied innocent spouse relief and other equitable relief as to any liability included in his or her request for innocent spouse relief may request that the denials of such relief be reconsidered by the Board.

(g) Statute of Limitations. These provisions for innocent spouse relief and other equitable relief shall apply to all calendar months, quarters, or years for requests filed ~~claims made~~ no later than one year after the Board's first contact with the spouse making the ~~request claim~~.

Requests filed ~~Claims made~~ after one year from the Board's first contact with the spouse making the ~~request claim~~ shall not apply to any calendar month, quarter, or year that is

more than five years from the return due date for nonpayment on a return, or

more than five years from the finality date on the Board-issued determination or similar billing document for collection of a tax or fee,

whichever is later.

No calendar months, quarters, or years shall be eligible for relief under this regulation that have been closed by res judicata.

~~(h)~~ Refunds. A refund of any amounts under this regulation~~these provisions~~ shall be subject to the requirements as set forth in the refund provisions of the applicable tax, fee, and surcharge law, as specified in paragraph (1) of subdivision (a).

~~(i)~~ This regulation shall apply retroactively to liabilities arising prior to January 1, 2008.

~~(h) A spouse may be relieved of liability for any unpaid tax or deficiency under the laws specified in paragraph (1) of subdivision (a) if, taking into account all the facts and circumstances, it is inequitable to hold the spouse liable for such amount attributable to any item for which relief is not available under subdivisions (a) through (d). A spouse may be considered for equitable relief under this subdivision only after a written claim for relief as an innocent spouse has been filed pursuant to subdivision (d). A spouse whose claim for equitable relief is denied may request that the claim be reconsidered by the board.~~

~~(1) Criteria for Equitable Relief.~~

~~(A) Factors that may be considered for the purpose of granting equitable relief include, but are not limited to:~~

- ~~1. The claiming spouse is separated (whether legally or not) or divorced from the nonclaiming spouse.~~
- ~~2. The claiming spouse would suffer economic hardship if relief is not granted.~~
- ~~3. The claiming spouse, under duress from the nonclaiming spouse, did not pay the liability. To substantiate "duress," the claiming spouse must provide objective evidence. "Objective evidence" can include, but is not limited to, such documents as police reports, restraining orders, or counseling reports.~~
- ~~4. The claiming spouse did not know and had no reason to know about the items causing the understatement or that the tax would not be paid.~~
- ~~5. The nonclaiming spouse has a legal obligation under a divorce decree or agreement to pay the tax. (This obligation will not be considered a positive factor if the claiming spouse knew or had reason to know, at the time the divorce decree or agreement was entered into, that the nonclaiming spouse would not pay the tax.)~~
- ~~6. The tax for which the claiming spouse is requesting relief is attributable to the nonclaiming spouse.~~

~~(B) Factors that may be considered for purposes of denying equitable relief include, but are not limited to:~~

~~1. The claiming spouse will not suffer economic hardship if relief is not granted.~~

~~2. The claiming spouse knew or had reason to know about the items causing the understatement or that the tax would be unpaid at the time the claiming spouse signed the return.~~

~~4. The claiming spouse has not made a good faith effort to comply with the board's laws for the periods for which the claiming spouse is requesting relief or for subsequent periods of liability.~~

~~5. The claiming spouse has a legal obligation under a divorce decree or agreement to pay the tax.~~

~~6. The tax for which relief is being requested is attributable to the claiming spouse.~~

~~(2) Conditions for Relief. The following conditions apply to claims for equitable relief:~~

~~(A) The statutes of limitations provided for innocent spouse claims in subdivisions (e) and (f) also apply to requests for equitable relief.~~

~~(B) Claims for equitable relief may be filed on liabilities incurred prior to January 1, 2008, as provided in subdivision (g).~~

~~(j)~~ The Board shall send notification by mail of the request~~claim~~ for innocent spouse relief from liability and the basis for that request~~claim~~ to the non-requesting~~nonclaiming~~ spouse.

~~(k)~~ Registered Domestic Partners. Pursuant to Family Code section 297.5, registered domestic partners shall have the same rights, protections, and benefits, and shall be subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Accordingly, for purposes of this regulation, domestic partners, as defined in Family Code section 297, have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties as stated herein with respect to spouses.

Note: Authority cited: Sections 8251, 9251, 11651, 30451, 32451, 38701, 40171, 41128, 43501, 45851, 46601, 50152, 55301 and 60601, Revenue and Taxation Code. Reference: Sections 7657.5, 8101-8131, 8880, 9151-9156, 11408.5, 11551-11555, 30285, 30361-30384, 32258, 32401-32407, 38454.5, 38601-38607, 40105, 40111-40117, 41099, 41100-41106, 43159.1, 43159.2, 43451-43456, 45158, 45651-45656, 46159, 46501-46507, 50112.6, 50139-50142.2, 55045.1, 55221-55226, 60210.5 and 60501-60512, Revenue and Taxation Code; and Sections 297, 297.5 and 308, Family Code.